HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 397/2006(SS)

Vikas Kumar
Vs
State of Uttaranchal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 24.3.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 397 of 2006 (SS)

Vikas Kumar s/o Late Sri Sabu Ram
Village Kundeshwari Tehsil Kashipur,
District Udham Singh Nagar ..... Petitioner

Versus

1. State of Uttaranchal
2. Joint Commissioner, Cane, Kashipur.
3. Sankari Ganna Vikas Evam Vikray Samiti,
4. Kashipur.
5. Assistant Commissioner, Cane/President
   District Cane Service Authority
   Udham Singh Nagar ..... Respondents

Sri Chaudhari Sudhir Kumar, Advocate for the petitioner
Standing counsel for the respondents.

Dated: March 24, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri Chaudhari Sudhir Kumar counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the letter dated 6.12.2005, issued by respondents no. 3.

Briefly stated the father of the petitioner namely Sri Sabu Ram who was employed in Sahkari Ganna Vikas Evam Vikray Samiti Ltd; Kashipur died in harness on 18.9.2005 after completing about 35 years of service. The petitioner moved an application to the respondents for giving him appointment on compassionate ground. The respondent no. 3 vide letter dated

6.12.2005 informed the petitioner that there is no provision for appointment to the dependants of Seasonal Employees who died in harness. The petitioner again on 16.12.2005 submitted a representation before the respondent no. 1 but till date no action has been taken in this regard.

The counsel for the petitioner has placed reliance in judgment dated 5.10.05 passed by Allahabad High Court in Writ petition no. 5201 (SS) of 2005, Smt. Suman Singh vs. State of U.P. in which similar controversy was adjudicated and after placing reliance on various cases laws it has been held that the dependants of Seasonal employee of Cane Society is also entitled to get appointment under Dying in Harness Rules. The observations are quoted below:

"This Court has settled similar kind of controversy in the following decisions of this Court:

1. *(2002) 1 UPLBEC 337 Santosh Kumar Mishra vs. State of U.P. & others*
2. *1998 (79) FLR 608 Smt. Maya Dei vs. State of U.P. & others*
3. *1999(3) ESC 2187 (All) (2000) 1 UPLBEC (All) Smt. Saroj Devi vs. State of U.P. and others.*

This court is of the opinion that all the citizen of this country whether working in P.W.D. Irrigation Cane or in any Department of the State Government or Corporations of the State, Central Government are governed by the same constitutional Laws and the articles contained therein. Here is a case where a poor widow with two children is being deprived of the benefit of dying in harness rules and other provisions, which were applicable on seasonal, daily wagers or temporary workers in the case societies. It is highly

discriminatory that late Sri Raj Narian Singh an employee of Cane Society, his widow and dependents are deprived of appointment while in P.W.D. Irrigation and in other Government Department the dependents of the servants are entitled for the benefits of appointment under the Dying in Harness Rules, which are statutory in nature."

Similar view has been taken by this Court in the Writ Petition No. 1119 of 2002 (SS) of Laxmi Devi vs. General Manager Kumaon Jal Sansthan & others decided on 9.5.2005. The said judgment was also confirmed in Special Appeal No. 63 of 2005 decided on 21.2.2006. A Division Bench has held as under:

"The case of the petitioner/respondent is that the husband of the petitioner/respondent though was not regularly appointed but he was holding the post of Chaukidar/Beldar for more than 12 years, therefore, the husband of the petitioner/ respondent was a Government Servant within the meaning of Clause (iii) of Rule 2 (a) of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974."

In view of above, a writ of certiorari is issued quashing the letter (order) dated 6.12.2005, issued by respondent No.3. Further a writ of mandamus is issued directing the respondents to consider the petitioner for appointment on a suitable post under Uttaranchal Recruitment of Dependants of Government Servants Dying in Harness Rules, within a month after obtaining certified copy of this order.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 24.3.2006

*Dhyani

Rajesh Tandon, J.